REMARKS

Prior to entry of this paper, Claims 1-22, 26-42, 47, 48, and 52-73 were pending. Claims 1-22, 26-42, 47, 48, and 52-73 were rejected. No amendments are made in this paper. Claims 1-22, 26-42, 47, 48, and 52-73 are currently pending. For at least the following reasons, Applicants respectfully submit that each of the presently pending claims is in condition for allowance.

Rejection under 35 U.S.C. § 101

Claims 64-68 were rejected under 35 U.S.C. §101 as the claimed invention being directed to non-statutory subject matter. The rejection is respectfully traversed.

The Office argues that Claim 64 recites a processor readable medium, which could include a transitory signal bearing medium, and that therefore Claims 64-68 are not statutory.

However, it is respectfully submitted that this is irrelevant, because Claim 64 recites "A manufacture" and is limited to a manufacture as statutorily defined. The claim is statutory because it recites "A manufacture", which is one of the four statutory categories, and the claim accordingly limits its scope to falling within the definition of the statutory category of a manufacture. Whether the term "processor-readable medium" by itself could include something non-statutory is irrelevant, since Claim 64 recites "A manufacture including a processor-readable medium" rather than just "a processor-readable medium". Assuming arguendo that a manufacture does not include mere transitory signals and a processor-readable medium could include mere transitory signals, a manufacture including a processor-readable medium does not include mere transitory signals. A manufacture including a "processor-readable medium" does not read on non-statutory signals—even if it could be proved that "processor-readable medium" could be interpreted to read on non-statutory signals, this is irrelevant given that non-statutory signals are not a manufacture.

Applicants made a similar argument in a previous paper. The Office responded by stating that, "Para.0112 of applicant specification only recites 'manufacture' without defining it." The Office then goes on to argue that "processor-readable medium" is broad enough to read on non-statutory subject matter.

It is respectfully submitted that whether or not "processor-readable medium", by itself, would read on non-statutory subject matter, is irrelevant. The claim recites, "A manufacture", which thereby limits the claim to statutory subject matter. The word "manufacture" does not need to be defined in the specification because its meaning is known without requiring a definition in the specification, and because it is one of the four categories of statutory subject matter. Adding the word "non-transitory" to the claim does not require a definition of the term "non-transitory" in the specification in order to limit the claim to non-statutory subject matter, because the meaning of the term "non-transitory" is understood without requiring a definition in the specification; the same applies to the use of the term "manufacture".

Further, the use of the word "manufacture" is actually more direct. Essentially, when adding the word "non-transitory" to a claim to a computer-readable medium or the like, an applicant is basically arguing that the claim is being limited to a non-transitory computer readable medium, therefore the claim falls within the statutory definition of a manufacture because it is non-transitory, and therefore the claim is statutory. Using the word manufacture actually removes one step from this and explicitly requires that the scope of the claim is limited to being a "manufacture", one of the four categories of statutory subject matter, and is thus a more direct way of limiting the claimed processor-readable medium to statutory subject matter.

The Office seems to be adopting a "per se" rule that the word "non-transitory" must be included in a claim to a computer-readable (or, if not in the claim, in the definition of a computer-readable medium in the specification) in order to be statutory. However, limiting the claim to a "manufacture" also limits the claim to a processor-readable medium to statutory subject matter. It is respectfully submitted that it is improper for the Office to look for the "magic words" of "non-transitory" and require the inclusion of those words to make a processor-readable medium statutory as a pre se rule, and should allow other phraseology which also limits the claim to statutory subject matter, as Applicants have done here. "Examiners are encouraged to suggest claim language to applicants to improve the clarity or precision of the language used, but should not reject claims or insist on their own preferences if other modes of expression selected by applicants satisfy the statutory requirement". MPEP 2173.02.

For at least these reasons, it is respectfully submitted that the rejections to Claims 64-68 under 35 U.S.C. § 101 should be withdrawn, and notice to that effect is earnestly solicited.

Provisional Double Patenting Rejection of Claim 32

Claim 32 was rejected on the ground of provisional nonstatutory obviousness-type double patenting as being unpatentable over Claim 1 of U.S. Patent No. 11/469,843. The rejection is respectfully traversed.

It is respectfully submitted that the rejection to Claim 32 should be withdrawn at least because Claim 1 of U.S. Patent No. 11/469,843 fails to teach "the forwarding means determines the traffic manager based in part on a connection key", as recited in Claim 32.

Applicants made a similar argument a previous paper. The Office responded by simply stating the law regarding obviousness-type double patent that an "**obviousness-type patenting rejection is appropriate when the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s), because the examined claim is either anticipated by, or would have been obvious over**, the reference claim(s)" (emphasis in original).

However, this explicitly ignores Applicants' argument that Claim 1 of U.S. Patent No. 11/469,843 fails to teach "the forwarding means determines the traffic manager based in part on a connection key", as recited in Applicants' Claim 32; i.e., Claim 1 of U.S. Patent No. 11/469,843 fails to anticipate or make obvious "the forwarding means determines the traffic manager based in part on a connection key". Further, the Office has the burden of establishing that the examined application claim is not patentable distinct from the reference claim, and here the Office has not supplied any arguments or reasoning in support of its conclusion that Claim 1 of U.S. Patent No. 11/469,843 anticipates or make obvious "the forwarding means determines the traffic manager based in part on a connection key", when in fact it appears on its face that Claim 1 of U.S. Patent No. 11/469,843 does not anticipate or make obvious "the forwarding means determines the traffic manager based in part on a connection key" as recited in Applicants' Claim 32.

For at least these reasons, it is respectfully submitted that the rejections to Claim 32 on the ground of obviousness-type double patenting should be withdrawn, and notice to that effect is earnestly solicited.

Rejections to Claims 1-11, 12-16, 17-22, 26-31, 32, 47-48, 52-59, and 60-73 under 35 U.S.C. § 103

Claims 1-11, 12-16, 17-22, 26-31, 32, 47-48, 52-56, and 60-73 were rejected under 35 U.S.C. §103(a) as being unpatentable over Albert et al (U.S. Patent No. 6,742,045) hereafter "Albert", in view of Datta et al (U.S. Patent No. 6,493,341) hereafter "Datta". Claims 57-59 were rejected under 35 U.S.C. §103(a) as being unpatentable over Albert et al (U.S. Patent No. 6,742,045), in view of Datta et al (U.S. Patent No. 6,493,341), and further in view of Hong et al (U.S. Publication No. 2002/0062372). Each of these rejections is respectfully traversed.

Independent Claim 1 is respectfully submitted to be allowable at least because the combination of Albert and Data fails to teach or suggest "if each received packet in the flow of packets is unassociated with the traffic manager, performing actions, including: (A) selecting another traffic manager; and (B) associating the other traffic manager with the flow of packets, wherein each received packet in the flow of packets is forwarded to the other traffic manager", as recited in Applicants' Claim 1.

Similarly, independent Claim 69 is respectfully submitted to be allowable at least because the combination of Albert and Data fails to teach or suggest "each time a flow of packets is received in which each received packet in the flow of packets is unassociated with the traffic manager, performing actions, including: selecting another traffic manager; and associating the other traffic manager with the flow of packets, wherein each received packet in the flow of packets is forwarded to the other traffic manager", as recited in Applicants' Claim 69.

If Albert and Datta were combined, the re-routing would be separate—Albert would be used for traffic management within a network service environment, and Datta would be used for routing outside of the network service environment when connected with a WAN. The associations of a packet with a traffic management done as discussed in Albert would not involve the routing to

another router if the fixed affinity did not apply—these would be separate events occurring at entirely different points in the network.

In Datta, a load-balancing determination is made as to which router 110 or a group of routers 110 to route to from the originating LAN to outside of the originating LAN. In the combination of Albert and Datta, in the load-balancing determination as to which router or group of routers to route to from the originating LAN to outside of the originating LAN, if the packet is unassociated with any traffic managers, another traffic manager is not selected. Also, in the combination of Albert and Datta, in the load-balancing determination as to which server to route to, there is no selection of another traffic manager based on whether or not each packet in a flow of packet is unassociated with a traffic manager. In Albert, a load-balancing determination is made as to which server to route to. Accordingly, in the combination of Albert and Datta, there is no processor that performs, "if each received packet in the flow of packets is unassociated with the traffic manager, performing actions, including: (A) selecting another traffic manager; and (B) associating the other traffic manager with the flow of packets, wherein each received packet in the flow of packets is forwarded to the other traffic manager", as recited in Applicants' Claim 1.

For at least these reasons, it is respectfully submitted that Claim 1 is allowable, and notice to that effect is earnestly solicited. It is respectfully submitted that the 35 U.S.C. § 103 rejections to each of the other independent claims rejected under 35 U.S.C. § 103 (other than 33-42) should be withdrawn at least for the reasons stated above with regard to Claim 1. It is respectfully submitted that each of the rejections under 35 U.S.C. § 103 to a dependent claim (other than 33-42) should be withdrawn at least based on its dependence upon the independent claim from which it depends.

Rejections to Claims 33-42 under 35 U.S.C. § 103

Claims 33-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Albert et al (U.S. Patent No. 6,742,045), in view of Hong et al (U.S. Publication No. 2002/0062372) hereafter "Hong". Each of these rejections is respectfully traversed.

Claim 33 is respectfully submitted to be allowable at least because the proposed combination of Albert and Hong would not meet all of the claim recitations of Claim 33.

The Office states that Albert may be used to teach several of the initial claim recitations, with Hong teaching the recitations involving the partial server-side connection keys, as discussed at paragraphs [0062] and [0063] of Hong. However, Hong discusses an architecture in which traffic is destined for a global IP address which contains a number of replicated servers. (See, inter alia, paragraph [0004] of Hong). In contrast, Albert discusses traffic management using affinity keys, based, among other things, on the destination IP address. (See col. 7, lines 26-61 of Albert). Accordingly, if the combination were used in the context of Albert, there would be separate destination IP addressing, and the content director functioning discussed at paragraphs [0062] and [0063] of Hong would not be employed in such a way as to meet the recitations of Claim 33 involving partial server-side connection keys. However, if the combination were used in the context of Hong, there would be a global IP address, and the fixed affinities of Albert would not be used, and accordingly the earlier recitations of Claim 33 would not be met by the combination.

The Office stated with regard to Applicants' statement that the combined system of Albert and Hong fails to teach or suggest the recitations involving partial server-side connections, that the Office disagrees with this statement, and restates how it believes various components of Albert and Hong read on the various claim recitations, but the Office has not responded to the argument that the combination fails to meet these recitations of Claim 33 because if the combination involved global IP address which contains a number of replicated servers, as taught in Hong, the fixed affinities of Albert would not be used by the combination, or if instead the combination did not involve global IP address which contains a number of replicated servers as discussed in Hong, but rather used traffic management using affinity keys based, among other things, on the destination IP address, there would be separate destination IP addressing, and the content director functioning discussed at paragraphs [0062] and [0063] of Hong would not be employed in such a way as to meet the recitations of Claim 33 involving partial server-side connection keys. Accordingly, the combination fails to meet all of the recitations of Claim 33, and notice to that effect is earnestly solicited.

For at least these reasons, it is respectfully submitted that Claim 33 is allowable, and notice to that effect is earnestly solicited. Claim 36 is respectfully submitted to be allowable at least for reasons similar to those stated above with regard to Claim 33. Claims 34 and 35 are respectfully

submitted to be allowable at least because they depend from Claim 33. Claims 37-42 are respectfully submitted to be allowable at least because they depend from Claim 36.

New discussion regarding rejections under 35 U.S.C. § 103

Applicants previous made similar argument as stated above with regard to the rejection to the claims under 35 U.S.C. § 103. The Office responded by stating, "In response to applicant's argument that the references fail to show certain features of the applicant's invention, it is noted that the features upon which applicant relies (i.e., rerouting would be separate, load balancing from LAN to outside LAN.....) are not recited in the rejected claims(s). Although the claims are interpreted in light of the specification, limitations from the specifications are not read into the claims."

It is respectfully submitted that the arguments are not arguments to features outside of the claims, but are specifically arguments that the proposed combination fails to teach what is recited in the rejected claims.

For example, a claimed combination does not teach the invention by including the feature in some different portion. For example, consider a hypothetical claimed invention of an automobile with an improved engine, claiming the engine includes metal A and metal B. The examiner cites a first patent of an automobile that includes an engine that includes metal A (but not metal B), and then cites an automobile with a fender that includes metal B. This combination does not make the invention obvious—the combination would be an automobile with an engine made of metal A and a fender made of metal B—the claimed combination does not teach an automobile with an engine having both metal A and metal B.

For example, Albert fails to teach, "if each received packet in the flow of packets is unassociated with the traffic manager, performing actions, including: (A) selecting another traffic manager; and (B) associating the other traffic manager with the flow of packets, wherein each received packet in the flow of packets is forwarded to the other traffic manager", as recited in Applicants' Claim 1. However, the combination of Albert and Datta also fails to teach this. If Albert and Data were combined, in the part of the network where traffic management is being done within a network environment, the teachings of Albert would be used, and in the part of the network where a decision is made as to which router to go to from outside of the original LAN, the teachings

of Datta would be used. The associations of a packet with a traffic management done as discussed in Albert would not involve the routing to another router if the fixed affinity did not apply—these would be separate events occurring at entirely different points in the network.

This is not a case of Applicants trying to distinguish based on some unclaimed feature. Rather, Applicants are pointing out that the claimed combination does not teach all of the recitations of the claim. This is like the automobile example above—the automobile with metal B in the fender gave no reason to include metal B in the engine, so the claimed combination did not teach an automobile with both metal A and metal B in the engine. The combination would simply be an automobile with metal A in the engine and metal B in the fender, and therefore does not meet the limitation of an automobile with metals A and B both in the engine. Similarly, the teachings of Datta do not provide any reason to modify Albert's traffic management so that traffic management done as discussed in Albert would involve the routing to another router if the fixed affinity did not apply. Instead, if Albert and Datta were combined, the traffic management within a network service environment would be done as taught in Albert, and routing outside of the network service environment when connected with a WAN would be done as taught in Datta.

In the combination of Albert and Datta, in the load-balancing determination as to which router or group of routers to route to from the originating LAN to outside of the originating LAN, if the packet is unassociated with any traffic managers, another traffic manager is not selected. Also, in the combination of Albert and Datta, in the load-balancing determination as to which server to route to, there is no selection of another traffic manager based on whether or not each packet in a flow of packet is unassociated with a traffic manager. Accordingly, in the combination of Albert and Datta, there is no processor that performs, "if each received packet in the flow of packets is unassociated with the traffic manager, performing actions, including: (A) selecting another traffic manager; and (B) associating the other traffic manager with the flow of packets, wherein each received packet in the flow of packets is forwarded to the other traffic manager", as recited in Applicants' Claim 1. The combination of Albert and Datta fails to meet all of the claimed recitations of Claim 1. Applicants are not arguing about an unclaimed feature of the invention.

Similarly, with regard to Claim 33, the combination of Albert and Hong does not meet all of the claim recitations of Claim 33. Applicants are not arguing about an unclaimed feature of the

invention, but are arguing that the claimed combination fails to meet all of the recitations of Claim 33. If the combination were used in the context of Albert, there would be separate destination IP addressing, and the content director functioning discussed at paragraphs [0062] and [0063] of Hong would not be employed in such a way as to meet the recitations of Claim 33 involving partial server-side connection keys. However, if the combination were used in the context of Hong, there would be a global IP address, and the fixed affinities of Albert would not be used, and accordingly the earlier recitations of Claim 33 would not be met by the combination.

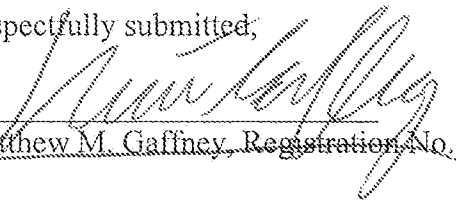
CONCLUSION

It is respectfully submitted that each of the presently pending claims (Claims 1-22, 26-42, 47-48, and 52-73) is in condition for allowance and notification to that effect is requested. Examiner is invited to contact the Applicants' representative at the below-listed telephone number if it is believed that the prosecution of this application may be assisted thereby. Although only certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentable. Applicants reserve the right to raise these arguments in the future.

Payment in the amount of $810.00 covering the fee set forth in 37 CFR 1.17(e) is included herewith. Applicant believes that no other fees are required for this Amendment. However, should any additional fees be necessary in connection with the filing of this Response, the Commissioner is hereby authorized and requested to charge Deposit Account No. 50-0320 for any such fees.

Dated: October 19, 2010

Respectfully submitted,

By 
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